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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Pending on Cl.A. 272/07

\+ CRL.M.C. 2758/2005

M/S PRAKASH INDUSTRIES LTD. ..... Petitioner
Through Mr. H.S. Phoolka, Sr. Advocate with
Mr. Kumar Subodh, Advocate

versus

THE STATE & ORS. ..... Respondent
Through Mr. Pawan Sharma for State

CORAM:
HON'BLE MR. JUSTICE S.RAVINDRA BHAT

ORDER

% **24.04.2007**

1. This petition under Section 482 Cr.P.C. is directed against an order made by the Magistrate dismissing the complaint preferred by the petitioner.
2. Learned counsel for the respondent/State submits that technically the proceeding would not be maintainable under Section 482 as non-appearance of the complainant and resultant order under Section 256 amounted to an acquittal. According to him, in such a case, leave to appeal under Section 378 (4) would be maintainable. At this stage counsel for the petitioner requests that the present proceedings be converted into a leave petition under Section 378 (4) and appropriate order granting leave be made.
3. Having considered the materials on record, the request for leave under Section 378 (4) is granted. After seeing the materials, leave is granted. Let the matter

be treated as an appeal. Accordingly, the Registry is directed to treat this matter as an appeal. With consent of the parties, the matter was taken up for disposal today.

4. The appellant had filed a complaint alleging commission of offences under Section 138/141, Negotiable Instruments Act. Process was issued on 07.01.200. Apparently, intervening proceedings were held and the complainant was unable to serve the respondent. Thereafter, steps were initiated by issuance of non-bailable warrants as can be seen by the order dated 02.09.04. On 27.05.05, the complainant was not represented; the case was called out more than once but on account of non-appearance, it was dismissed.

5. Counsel for the complainant urged that the matter was being diligently pursued, for the entire duration it was on the file of the Court and that the absence of counsel or the complainant in the proceedings on the concerned date was inadvertent. He has placed reliance upon an extract of the case diary maintained by the counsel to say that the matter was wrongly noted as 29th May, 2005 and not 27th May, 2005.

6. I have considered the materials on record and also the submissions of the parties. The non-appearance of the petitioner and his representative/counsel on 27th May, 2007 in my opinion was inadvertent, due to a mistaken belief that the case was listed two days later.

7. In the above circumstances, subject to the petitioner depositing Rs. 5,000/- as costs with the Delhi High Court Legal Services Committee within four weeks,

the complaint is hereby restored. The complainant shall present himself along with the counsel before the trial Court on 2nd May, 2007.

The appeal is allowed in the above terms.

S.RAVINDRA BHAT, J

APRIL 24, 2007
as